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Juneau v. State ex rel. Department of Health and Hospitals—Killed by the Calendar: A Seemingly Unfair Result But a Correct Action

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I. OVERVIEW

John Juneau was a patient at the Feliciana Forensic Facility when he was “attacked and severely injured by a fellow patient in 1991.”¹ After the attack, Juneau filed a personal injury claim against the state of Louisiana, which owned the facility.² When Juneau died more than two decades later, his suit was still pending in a Louisiana court.³ At the time of death, Juneau did not have a will, a spouse, or descendants and had already been predeceased by his parents and two sisters.⁴ John Juneau’s only surviving brother, Louis Juneau Jr., was substituted as plaintiff on April 15, 2014, but he too passed away just two weeks later.⁵ Louis Juneau Jr. was survived by his daughter, Joy Juneau, who was substituted as plaintiff in the suit, thereby replacing her deceased father and uncle.⁶ However, Joy Juneau was not the only

1. Juneau v. State *ex rel.* Dep’t of Health & Hosps., 2015-1382, p. 2 (La. App. 1 Cir. 7/7/16); 197 So. 3d 398, 399.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* at pp. 2-3; 197 So. 3d at 399.

family member who wanted to reap the benefits of John Juneau's lawsuit.⁷

The McKays, daughters of John and Louis Juneau's predeceased sister, Mary Juneau McKay, also wanted a portion of the proceeds from the case.⁸ The McKays agreed to substitute Joy as the new plaintiff, on the condition that any proceeds obtained from the suit would be deposited with the court and distributed fairly between Joy and the McKays.⁹ However, soon after the agreement was made, Joy moved for a disbursement of the funds, claiming she alone was entitled to receive the proceeds because she was John Juneau's sole legal heir under Louisiana Civil Code article 2315.1.¹⁰ The McKays countered, claiming "by representation of their mother" that they should recover half of the proceeds from the suit, with the other half going to Joy.¹¹ The trial court determined, in accordance with Louisiana Code of Civil Procedure article 801 and Civil Code article 2315.1, Joy alone was entitled to the proceeds from the lawsuit.¹² The McKays timely appealed the trial court decision.¹³ The Louisiana First Circuit Court of Appeals *held* that while it was an unjust outcome for "[h]eirs [of] the same class level [to be] treated differently," the McKays were nevertheless not entitled to recover any proceeds from the suit because their mother predeceased John Juneau and therefore was not a member of a designated class of survivors under Louisiana Civil Code article 2315.1. *Juneau v. State ex rel. Dep't of Health & Hosps.*, 2015-1382, p. 10 (La. App. 1 Cir. 7/7/16); 197 So. 3d 398, 404.

II. BACKGROUND

Louisiana Code of Civil Procedure article 801 provides that "[w]hen a party dies during the pendency of an action which is not extinguished by his death, his *legal successor* may have himself substituted for the deceased party."¹⁴ Article 801 goes on to state that the term "legal successor" means "[t]he survivors designated in Article 2315.1 of the Civil Code."¹⁵

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at p. 3; 197 So. 3d at 399-400.

11. *Id.*; 197 So. 3d at 400.

12. *Id.*

13. *Id.*

14. LA. CODE CIV. PROC. art. 801 (emphasis added).

15. *Id.*

Civil Code article 2315.1 lays out a hierarchy showing which of the decedent plaintiff's family members are able to be substituted as plaintiff when the decedent plaintiff dies while the suit is pending.¹⁶ The article states only *surviving* family members are to be considered for the purposes of the article.¹⁷

In order to fully understand the purpose of an article 2315.1 survival action, it is helpful to look at two revisions. In the 1960 Code revisions, the legislature, for the first time, made a distinction between property and personal damages.¹⁸ The Code allowed for the right of action and proceeds from property damage suits to travel through ordinary successions law, but the right to maintain the survival action for personal damages was only given to an exclusive list of people laid out in article 2315.¹⁹ This meant that there could be a “split” created in the cause of action.²⁰ For example, if A were in a car crash and began a suit for both damages to his car and to his person but died soon after, the case would be split. The suit for damages to his property would go to his heirs through normal successions law, but the suit for damages to his person would be given to the specific beneficiaries listed in article 2315.²¹ However, this changed with the 1986 revisions to the Civil Code.²²

In the 1986 revisions, the legislature revised the Code, so that the separate rights to property damage and personal damage no longer exist.²³ Through the creation of article 2315.1, the legislature made clear that rights of action for damage to both the decedent's person and property were to be completely separate from other successions law and instead should be governed by article 2315.1.²⁴ Therefore, the legislative history of survival actions would seem to indicate that the legislature did not intend to have the proceeds from the survival action

16. See LA. CIV. CODE art. 2315.1(A) (2016). The hierarchy is as follows, from most preferred to least preferred: (a) spouse and child/children, (b) parents, (c) siblings, and (d) grandparents. *Id.*

17. *Id.* (emphasis added).

18. Jason R. Johanson, Comment, *Common Law “Intervention”: The Rights of Successors and the Uneasy History of Louisiana’s Survival Action*, 77 TUL. L. REV. 737, 743 (2003).

19. *Id.* at 743-44.

20. See *id.* at 745-46.

21. See *id.*

22. *Id.* at 746.

23. *Id.*

24. *Id.*

suit go through the succession, but rather go to the descendants listed in article 2315.1.²⁵

There are key differences between “survival actions” and “wrongful death actions,” including how and why they are passed on to descendants. Both actions result from a tortious incident, but the damages awarded are meant to compensate for different types of injury.²⁶ A survival action, codified in article 2315.1, is intended to “compensate[] the victim for the pain and suffering he endures until the time of his death.”²⁷ A survival action “does not die with the victim” and is instead passed down to specific descendants via article 2315.1.²⁸ However, in order to be able to recover any proceeds from a survival action, the “beneficiary or heir *must survive* the tort victim.”²⁹

Conversely, a wrongful death action, codified in article 2315.2, is not intended to compensate the now deceased party who experienced the physical harm.³⁰ It is intended to give monetary compensation to specific family members who have suffered their own loss (loss of financial support, loss of consortium, etc.) through the death of the injured party.³¹ In a wrongful death action, the family members are attempting to recover for their own personal loss created by the death of the victim, not for the victim’s pain and suffering.³² Thus, whereas a survival action is created at the time of the *injury* to the victim, a wrongful death action is only created upon the *death* of the victim.³³

Louisiana courts have held that survival actions and wrongful death actions are ruled by specific laws, not by general laws of successions and inheritance.³⁴ In *Estate of Burch v. Hancock Holding Co.*, the Louisiana First Circuit stated that “wrongful death and survival actions . . . are not subject to the law[s] of marriage, of parent and child, of inheritance, [and are not] required to conform to civil

25. *Id.* at 747-48.

26. *See* Deborah Johnson Juneau, Note, *Wartelle v. Women’s and Children’s Hospital: A Fate Worse Than Wrongful Death: Legal Nonexistence for the Stillborn Child*, 59 LA. L. REV. 347, 350 (1998).

27. *See* LA. CIV. CODE art. 2315.1 (2016); Juneau, *supra* note 26, at 350.

28. Juneau, *supra* note 26, at 350.

29. *Day v. Day*, 563 So. 2d 441, 443 (La. Ct. App. 1990) (emphasis added).

30. *See* LA. CIV. CODE art. 2315.2.

31. Juneau, *supra* note 26, at 350.

32. *Id.*

33. *Id.*

34. *See* *Estate of Burch v. Hancock Holding Co.*, 2009-1839, p. 6 (La. App. 1 Cir. 5/7/10); 39 So. 3d 742, 747 (citing cases).

law concepts.”³⁵ The court went on to state that “[n]either the survival action nor the wrongful death action provide[s] rights that are transmitted from the tort victim to the victim’s heirs in an inheritance sense”—meaning neither right “pass[es] through the victim’s succession.”³⁶ Instead, both rights are passed down to the “specified survivors” of a victim’s family via the corresponding Civil Code article (i.e., article 2315.1 or 2315.2).³⁷ The court held that when considering a survival action, courts should look to the Civil Code, not other areas of law.³⁸

This type of carving out is not unique to survival actions and wrongful death actions.³⁹ There are many other examples where the Legislature has specifically excluded certain property or rights from passing through the succession and being governed by ordinary successions law.⁴⁰ For example, life insurance payments that are payable to a named beneficiary are excluded from the succession of the decedent.⁴¹

The clearest distinction between rights governed by successions law and rights governed by the survival action article came in the case of *Day v. Day*.⁴² In *Day*, Harry Day Sr. filed a personal injury suit in an attempt to recover damages for his contraction of silicosis.⁴³ At the time the suit was filed, Day Sr. had three living children.⁴⁴ However, one of Day’s sons, Harry Day Jr., died approximately one year after the filing of the suit.⁴⁵ Day Sr. died approximately two months after the death of his son, leaving behind two surviving children, Jeff and Nelda Mae, as well as the pending lawsuit.⁴⁶ Subsequently, Jeff and Nelda Mae were substituted as plaintiffs in the pending suit and settled for \$800,000.⁴⁷ The children of Day Jr. sued Jeff and Nelda Mae, claiming they were entitled to a cut of the settlement through

35. *Id.* (citing *Levy v. State ex. rel. Charity Hosp. of La. at New Orleans Bd. of Adm’rs*, 216 So. 2d 818, 819 (La. 1968)).

36. *Id.*

37. *Id.* (citing *Collins v. Becnel*, 297 So. 2d 506, 508 (La. Ct. App. 1974)).

38. *Id.*

39. *See Johanson, supra* note 18, at 759.

40. *Id.*

41. *Id.*

42. 563 So. 2d 441 (La. Ct. App. 1990). It is unclear exactly who Day sued for his injuries, since it is not addressed in the appellate court decision, and no prior or subsequent history has been published.

43. *Id.* at 442.

44. *See id.*

45. *Id.*

46. *Id.*

47. *Id.*

their father's succession.⁴⁸ In its decision, the court held that under Civil Code article 2315, because Day Jr. predeceased Day Sr., his heirs had no cause of action to recover any proceeds from the settlement of the suit.⁴⁹ The court applied a similar analysis in *Juneau*.

III. COURT'S DECISION

In the noted case, the Louisiana First Circuit strictly applied the framework of Civil Code article 2515.1 to determine that heirs of the same class level may be treated differently by the law, regardless of the result's lack of fairness.⁵⁰ After distinguishing two cases cited by the plaintiffs,⁵¹ the court held the "beneficiary [of the survival action] must survive the tort victim in order to have a cause of action to recover proceeds from the settlement of an underlying suit."⁵²

Next, citing *Estate of Burch*, the court reaffirmed that it does not have the "authority to judicially expand the classes of beneficiaries" listed in Civil Code article 2315.1.⁵³ The court also reaffirmed that "survival action[s] . . . are [not] transmitted from the tort victim to the victim's heirs in an inheritance sense," but rather are governed by article 2315.1.⁵⁴ To further support this point, the court turned to Warren L. Mengis' commentary on the use of Civil Code article 2315.1.⁵⁵ The court especially agreed with Mengis' statement that "[t]he proceeds from a survival action should be excluded from the estate of the decedent if there exists a survivor under Article 2315.1."⁵⁶

Finally, the court looked to its analysis in *Day v. Day*.⁵⁷ The court saw distinct factual similarities between *Day* and *Juneau*, specifically

48. *Id.*

49. *Id.* at 443 (citing *Chatman v. Martin*, 245 So. 2d 423 (La. Ct. App. 1971)).

50. *Juneau v. State ex rel. Dep't of Health & Hosps.*, 2015-1382, p. 10 (La. App. 1 Cir. 7/7/16); 197 So. 3d 398, 404.

51. The plaintiffs cited *Carl v. Naquin*, 93-1725 (La. App. 1 Cir. 5/20/94); 637 So. 2d 736 and *Nathan v. Touro Infirmary*, 512 So. 2d 352 (La. 1987). The court found that *Carl* was not relevant because it concerned the appropriate substitute under LA. CODE CIV. PROC. art. 801, whereas here, there was no dispute that Louis Juneau was the proper substitute. See *Juneau*, 2015-1382 at p. 6; 197 So. 3d at 402. The court also found that *Nathan* was irrelevant because the decedent in that case did not have any surviving relatives under LA. CIV. CODE art. 2315, whereas John Juneau had a surviving relative (i.e., Louis Juneau). See *id.* at p. 7; 197 So. 3d at 402.

52. *Juneau*, 2015-1382 at p. 7; 197 So. 3d at 402 (citing *Day*, 563 So. 2d at 443).

53. *Id.* at p. 8; 197 So. 3d at 403 (quoting *Estate of Burch v. Hancock Holding Co.*, 2009-1839, p. 10 (La. App. 1 Cir. 5/7/10); 39 So. 3d 742, 749).

54. *Id.* (quoting *Estate of Burch*, 2009-1839 at p. 6; 39 So. 3d at 747).

55. *Id.*

56. *Id.* (quoting Warren L. Mengis, *The Article 2315.1 Survival Action: A Probate or Non-Probate Item*, 61 LA. L. REV. 417, 422 (2001)).

57. *Id.* at pp. 9-10; 197 So. 3d at 404.

that “Mr. Day . . . was predeceased by a member of the highest ranking [article] 2315.1 class, [and] two of the three members of John Juneau’s [article] 2315.1(A)(3) class predeceased him.”⁵⁸

Finding the ruling in *Day* persuasive, the court held that since Louis Juneau “was the only surviving sibling at the time of John Juneau’s death, under [article] 2315.1, Louis Juneau was the only person to have a cause of action to recover the proceeds from the settlement of the John Juneau suit.”⁵⁹ Therefore, only the children of Louis Juneau were “entitled to the proceeds” of the survival action.⁶⁰

Before concluding, the court made a special point to note the result seemed unfair because “[h]eirs at the same class level [were being] treated differently.”⁶¹ The court again compared the policy reasons behind survival actions and wrongful death actions.⁶² The court found it odd that while survival actions and wrongful death actions are created by different underlying causes of action and are meant to compensate distinct types of harm, they are treated the same way by the Civil Code.⁶³ The court pointed out that because a wrongful death action is “particular to each designated member of the beneficiary class[, t]he value of the claim will vary, depending [on] the relationship of the claimant to the decedent.”⁶⁴ Therefore, the court concluded there are “sound policy reason[s] for [wrongful death] claims to belong to the individual claimants.”⁶⁵ Conversely, a survival action “belonged to the injured party,” and its value is in no way affected by the “relationship of the person who is substituted for the decedent.”⁶⁶ Thus, even though article 2315.1 required Joy Juneau be the only party to benefit from John Juneau’s survival action, the court said there was “no logical policy reason” for this result.⁶⁷

58. *Id.* at p. 10; 197 So. 3d at 404.

59. *Id.*

60. *Id.*

61. *Id.* Specifically, the court did not think the outcome was fair because it allowed “[t]he Juneau siblings [to] inherit from their uncle while their first cousins, the McKay siblings, [did] not inherit from the same uncle.” *Id.*

62. *See id.* at pp. 10-11; 197 So. 3d at 404-05.

63. *See id.* at p. 10; 197 So. 3d at 404.

64. *Id.* at p. 11; 197 So. 3d at 404.

65. *Id.* at p. 11; 197 So. 3d at 404-05.

66. *Id.* at p. 10; 197 So. 3d at 404.

67. *Id.* Joy Juneau had two siblings, but they chose not to join in the suit. *Id.* at p. 2, 197 So. 3d at 399.

IV. ANALYSIS

In the noted case, the Louisiana First Circuit reached a result consistent with prior jurisprudence and current statutory law. When considering a survival action, the family member's time of death is crucial to determining who has the right to be substituted for the decedent and reap the benefits of his or her suit.⁶⁸ The Code is clear that only the *surviving* members of the decedent's family have the right to recover from a survival action.⁶⁹ Therefore, the McKays lost all claim to the proceeds from their uncle's suit the moment their mother, Mary Juneau McKay, predeceased John Juneau.⁷⁰ Because the McKays lost all claim to the suit, Joy Juneau was the only surviving heir involved in the case who was capable of recovery, once her father, Louis Juneau, died.⁷¹

Admittedly, this outcome is not kind to the McKay plaintiffs, but it is consistent with the purposes of a survival action. Survival actions were created "to provide for the transfer of the ownership of a tort cause of action when the tort victim-obligee dies prior to, or during the pendency of, litigation."⁷² In other words, survival actions were not created for the benefit of a decedent's relatives and family members.⁷³ Survival actions were created to ensure that when a tort victim died, his claim did not die with him.⁷⁴ If the legislature's objective in creating survival actions was to benefit the victim's heirs, it would have simply let survival actions be governed by basic successions law.⁷⁵

To make sure the decedent-victim's family continued the suit, the legislature used the potential proceeds from the suit as a way to incentivize family members to continue with the case.⁷⁶ As Warren Mengis opined, "If this were not so, why would [a relative] . . . bother to pursue the action?"⁷⁷

However, the *Juneau* court did raise an interesting point—the survival action and wrongful death articles are written in largely the

68. See LA. CIV. CODE art. 2315.1 (2016).

69. See LA. CIV. CODE art. 2315.1(A).

70. *Juneau*, 2015-1382 at p. 10; 197 So. 3d at 404.

71. See *id.*

72. *Rainey v. Entergy Gulf States, Inc.*, 2001-2414, p. 8 (La. App. 1 Cir. 6/25/04); 885 So. 2d 1193, 1199-1200 (emphasis omitted).

73. See *id.*

74. See *id.* at p. 9; 885 So. 2d at 1200.

75. See Mengis, *supra* note 56, at 422.

76. See *id.*

77. *Id.*

same way, but their “underlying causes of action are not identical.”⁷⁸ Unlike a wrongful death action, the value of the underlying case in a survival action is not affected by the relationship of the decedent to the replacement party,⁷⁹ so the *Juneau* court concluded that “[t]here seems to be no logical policy reason that the survival action should not be part of the decedent’s estate.”⁸⁰

But if the survival action instead ran through the succession, there would be a risk that the proceeds from the suit would be so diluted that no one would be willing to pursue it. Imagine the following scenario:⁸¹ A sues another motorist for minor injuries he sustained in a minor car crash. A is advised that if his suit is successful, he will likely be awarded \$10,000. A has three brothers—B, C, and D. B has four children. B dies, then A dies soon after without a will. C and D would each have a right to 33% of the proceeds from the suit, while each of B’s children would have a right to 8.25%. In this scenario, it is conceivable that none of A’s four nieces and nephews would want to pursue the case, as the potential of gaining \$825 may not be worth the time and effort necessary to win. The same might be true for C and D, even though each could gain \$3,300. If the proceeds from a survival action are heavily diluted through a succession, there is a risk that, at the end of the day, there may not be enough to gain from the suit that it incentivizes the surviving family members to pursue it. And should any one of those parties decide that it is worth their time and effort, their relatives who did nothing would unjustly gain from the pursuing relative’s hard work. The proceeds of the suit need to be concentrated in order to give the surviving parties incentive to vigorously pursue the suit.⁸² Article 2315.1 does away with these concerns by giving the right to pursue the suit and its proceeds to as few parties as possible, in an effort to ensure the suit does not die with the decedent.⁸³

Although the result in *Juneau* may seem unfair, the outcome is consistent with the mission of a survival action: to ensure the continuation of pending litigation through the incentive of potential

78. *Juneau v. State ex rel. Dep’t of Health & Hosps.*, 2015-1382, p. 10 (La. App. 1 Cir. 7/7/16); 197 So. 3d 398, 404.

79. *Id.*

80. *Id.*

81. Johanson, *supra* note 18, at 745-46.

82. *See* Mengis, *supra* note 56, at 422.

83. *Id.*; *see* LA. CIV. CODE art. 2315.1 (2016).

gains in the event of the original plaintiff's death.⁸⁴ The court's interpretation of article 2315.1 led to Louis Juneau Jr., followed by Joy Juneau, earning the legal right to continue the litigation originated by John Juneau in 1991.⁸⁵ Because the survival action is strictly bound to the time of potential benefitting party's deaths, the McKays' claim died with the loss of their mother—a claim killed by the calendar.

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84. See *Rainey v. Entergy Gulf States, Inc.*, 2001-2414, p. 8 (La. App. 1 Cir. 6/25/04); 885 So. 2d 1193, 1199-1200.

85. *Juneau*, 2015-1382 at p. 10; 197 So. 3d at 404.

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